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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re A.A. et al., Persons Coming Under the
Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

A.A.,

Defendant and Appellant.

E062420

(Super.Ct.No. RIJ1101558)

OPINION

APPEAL from the Superior Court of Riverside County. Harry A. Staley, Judge.
(Retired Judge of the Kern Super. Ct. assigned by the Chief Justice pursuant to art. VI,
§ 6 of the Cal. Const.) Affirmed.

William D. Caldwell, under appointment by the Court of Appeal, for Defendant
and Appellant.

Gregory P. Priamos, County Counsel, and James E. Brown, Guy B. Pittman, and
Anna M. Marchand, Deputies County Counsel, for Plaintiff and Respondent.

Appellant A.A. (father) appeals the termination of his parental rights following a Welfare and Institutions Code¹ section 366.26 hearing. He contends the juvenile court abused its discretion by summarily denying his section 388 petition, and erred by failing to apply the parental benefit exception of section 366.26, subdivision (c)(1)(B)(i). We disagree and affirm.

I. PROCEDURAL BACKGROUND AND FACTS

In July 2011, the Riverside County Department of Public Social Services (the Department) received a referral alleging that father's children wandered outside without any supervision. The children were living with their parents and the paternal grandmother, who assisted in their care. The mother was arrested, and father agreed to participate in Family Preservation Court.

On December 5, 2011, the Department initiated juvenile dependency proceedings as to A.A., Jr., born in 2006; his younger brother, born in 2008; and his younger sister, born in 2010 (children), alleging they were at substantial risk of harm pursuant to section 300, subdivision (b). The Department alleged that both parents abused controlled substances (the mother marijuana and father methamphetamine), had criminal histories, and had a history with the Department.² The juvenile court found father to be the

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

² Because the mother is not a party to this appeal, she will be referenced only as necessary for context.

presumed father of all of the children, and made findings to justify allowing the children to remain with the parents. Predispositional services were authorized.

On January 18, 2012, the Department filed a first amended petition, which added the allegation that father had tested positive for methamphetamine on January 5, 2012. The court sustained the allegations of the amended petition, declared the children to be dependents of the court, and allowed the children to remain with the mother on the condition that father move out of the home. The court ordered reunification services for father, who was ordered to complete counseling, parenting and substance abuse services and submit to random drug testing.

On May 31, 2012, the Department filed a section 387 supplemental petition due to noncompliance of both parents with the court-ordered case plan, i.e., using methamphetamine and failing to provide the children with a stable living environment. That same day, the Department also filed a section 342 “Subsequent” petition due to the parents engaging in acts of domestic violence. The children were detained on June 1, 2012, and placed in a foster care home. In the section 387 jurisdiction/disposition report filed on June 21, 2012, the Department recommended that the children remain in out-of-home placement, reunification services be provided, and visitation be supervised. However, due to A.A., Jr.’s extreme behaviors, the children were moved two times, and finally placed separately. Contested jurisdiction hearings on both petitions were set for July 19, 2012.

According to the addendum report filed on July 13, 2012, the parents were inconsistent in maintaining regular visitation with the children and engaged in minimal contact with them during visits; the relationship between the parents and the paternal grandmother, with whom they were living, was volatile. The progress of the parents on their case plan was minimal. On July 19, 2012, the juvenile court sustained the allegations of the section 387 petition. The section 342 petition was heard on July 30, 2012, and the court sustained the allegations in that petition. The children were removed from the custody of parents, and the parents were provided family reunification services, including counseling, domestic violence prevention, parenting, and substance abuse treatment services.

According to the status review report filed on December 20, 2012, father continued to use methamphetamine, was arrested and convicted of drug possession, was on three years' formal probation, entered into a residential treatment center in November 2012, and was unemployed. However, he did complete a parenting course. A.A., Jr., had been returned to the mother's custody in October 2012, while the younger children remained in foster care until A.A., Jr.'s aggressive outbursts stabilized. On February 6, 2013, at the status hearing, the court continued the children in their placement and ordered another six months of reunification services. The court further liberalized visitation to include unsupervised, overnight, visits.

By April 2013, the parents' participation in reunification services lapsed. They began missing random drug tests, failed to participate in hair follicle testing, and missed aftercare treatment sessions and counseling appointments. Nonetheless, in both the status

review report filed on July 2, 2013, and the addendum report filed on August 19, 2013, the Department recommended six more months of services. The court agreed and so ordered.

In the 18-month review report filed on January 7, 2014, the Department recommended that A.A., Jr. remain in the home with father and that the younger brother and sister return to father's care. While father was participating in "Wraparound"³ family team meetings and one-on-one sessions with his parent partners to develop strong parenting skills, the mother's whereabouts were unknown. On February 24, 2014, the Department filed another section 387 petition regarding A.A., Jr., because his placement with the mother was no longer effective due to her abuse of methamphetamine. On February 25, 2014, the juvenile court found that prima facie evidence supported the section 387 petition. On April 15, 2014, the court removed A.A., Jr., from the mother's custody, terminated her reunification services, and continued father's family maintenance services. The court ordered the mother's visits with the children to be supervised by the Department.

On April 28, 2014, the Department filed a section 387 petition to remove the children from father's custody because he was allowing the mother unsupervised access to the children, and the parents were engaging in domestic violence in the presence of the children. The court sustained the allegations in the section 387 petition and ordered the children placed in foster care. Father was provided with supervised visitation. In the

³ Wraparound services are intensive home-based family services arranged by the Department.

jurisdiction/disposition report filed on May 16, 2014, and the addendum report filed on June 18, 2014, the Department recommended that father be denied reunification services on the grounds that he had exceeded the allotted time for reunification, and that a section 366.26 hearing be set within 120 days so the Department could identify a permanent plan of adoption.

On May 29, 2014, the children were placed with the paternal grandmother. On June 23, 2014, the juvenile court sustained the allegations of the supplemental petition, removed the children from father's custody, terminated father's family maintenance services, and denied further reunification services. Both the paternal grandmother and the paternal aunt expressed a desire to adopt the children should it be in the children's best interests.

On October 17, 2014, father filed a section 388 petition. Specifically, he requested that the court (1) vacate the section 366.26 hearing and grant him six months of services, or (2) return the children to him. In support of his request, father pointed out that he was enrolled in individual counseling to address the issues that brought him to the attention of the court, and his therapist noted that he was stable and continued to maintain sobriety. According to father, he acknowledged he had made an error in judgment by allowing the mother into his home, he had doubled his efforts with regard to therapy and was working diligently to be a better parent, and the children loved him. The court summarily denied father's petition on October 17, 2014.

According to the Department's addendum report filed on November 17, 2014, the children were thriving with the paternal grandmother, who continued to provide them with a loving, stable, and nurturing environment. The problematic behaviors decreased with the stability; the children were "always happy and energetic," and they had a healthy bond with the paternal grandmother. The children did not appear to understand what adoption is. The boys wanted to live with father because he "is their family." However, if that were not possible, the boys were interested in remaining with their grandmother. The sister said she liked living with her grandmother.

The court then held the section 366.26 hearing on November 20, 2014, terminated all parental rights, and selected adoption as the permanent plan.

II. DISCUSSION

A. The Juvenile Court Properly Denied Father's Section 388 Petition.

The juvenile court summarily denied father's petition without an evidentiary hearing, concluding the proposed change "does not promote the best interest of the child[ren]." Father contends the juvenile court abused its discretion in summarily denying his section 388 petition. We find no error.

"Section 388 permits '[a]ny parent or other person having an interest in a child who is a dependent child of the juvenile court' to petition 'for a hearing to change, modify, or set aside any order of court previously made or to terminate the jurisdiction of the court' on grounds of 'change of circumstance or new evidence.' (§ 388, subd. (a).) 'If it appears that the best interests of the child may be promoted by the proposed change of order, . . . the court shall order that a hearing be held . . . ' (*Id.*, subd. (c).) Section

388 thus gives the court two choices: (1) summarily deny the petition or (2) hold a hearing. [Citations.] In order to avoid summary denial, the petitioner must make a ‘prima facie’ showing of ‘facts which will sustain a favorable decision if the evidence submitted in support of the allegations by the petitioner is credited.’ [Citations.]” (*In re Lesly G.* (2008) 162 Cal.App.4th 904, 912.)

“We review a summary denial of a hearing on a modification petition for abuse of discretion. [Citation.] Under this standard of review, we will not disturb the decision of the trial court unless the trial court exceeded the limits of legal discretion by making an arbitrary, capricious or patently absurd determination. [Citation.]” (*In re A.S.* (2009) 180 Cal.App.4th 351, 358.)

Here, in support of his petition, father claimed that the new evidence or changed circumstances included (1) his enrollment into individual counseling to address the issues which brought him to the attention of the court, and (2) his therapist had noted that he was stable and continued to maintain his sobriety. He asked the court to vacate the section 366.26 hearing and to grant him six months of services, or return the children to his care. He claimed that doing so was in the children’s best interests because they had previously been placed with him and they loved him. However, the only evidence he offered in support of his petition was the A.C.T. Discharge Summary dated September 25, 2014, which noted that father was initially in denial, but had progressively changed his thinking and was willing to work on his goal, and that he needed to address his relationship with his mother. As such, it is questionable whether father made a prima facie showing of changed circumstances.

In any case, father failed to make a prima facie showing that providing him with an additional six months of reunification services with the goal of returning the children to his care would serve their best interests. The record shows the children were thriving with the paternal grandmother, who continued to provide them with a loving, stable, and nurturing environment. Their problematic behaviors decreased with the stability; they were happy and energetic, and they had a healthy bond with the paternal grandmother. Although the two boys expressed a desire to live with father, they stated that they would like to remain with their grandmother if they could not return to father's care. The sibling sister said she liked living with her grandmother. Father had had three years to reunify with his children; however, he was unable to do so. Given that his services had been terminated on June 23, 2014, the children's interest in the permanency and stability they had found outside father's care was paramount. Father did not show how returning the children to his custody would benefit the children in any way. "After the termination of reunification services . . . 'the focus shifts to the needs of the child for permanency and stability' [citation]" (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.) Father presented nothing tending to show those needs would not best be met by letting the children be adopted by their paternal grandmother. As such, summary denial of the section 388 petition was proper.

B. Father Has Not Shown the Juvenile Court Erred in Finding the Beneficial Parental Relationship Exception Not Applicable.

Father contends the juvenile court should have found that the beneficial parental relationship exception to the statutory preference for adoption applied and that the order terminating his parental rights must be reversed. We disagree.

“Adoption must be selected as the permanent plan for an adoptable child and parental rights terminated unless the court finds ‘a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances: [¶] (i) The parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship. . . .’ (§ 366.26, subd. (c)(1)(B).)” (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314 (*Bailey J.*)). Under these provisions, “the court must order adoption and its necessary consequence, termination of parental rights, unless one of the specified circumstances provides a *compelling* reason for finding that termination of parental rights would be detrimental to the child. The specified statutory circumstances . . . ‘must be considered in view of the legislative preference for adoption when reunification efforts have failed.’ [Citation.]” (*In re Celine R.* (2003) 31 Cal.4th 45, 53, italics added (*Celine R.*)). “‘Adoption is the Legislature’s first choice because it gives the child the best chance at [a full] emotional commitment from a responsible caretaker.’ [Citation.]” (*Ibid.*)

The parent has the burden of establishing by a preponderance of the evidence that a statutory exception to adoption applies. (*Bailey J., supra*, 189 Cal.App.4th at p. 1314.) The parent must show both that a beneficial parental relationship exists *and* that severing

that relationship would result in great harm to the child. (*Id.* at pp. 1314-1315.) A juvenile court’s finding that the beneficial parental relationship exception does not apply is reviewed in part under the substantial evidence standard and in part for abuse of discretion: The factual finding, i.e., whether a beneficial parental relationship exists, is reviewed for substantial evidence, while the court’s determination that the relationship does or does not constitute a “compelling reason” (*Celine R.*, *supra*, 31 Cal.4th at p. 53) for finding that termination of parental rights would be detrimental is reviewed for abuse of discretion. (*Bailey J.*, *supra*, at pp. 1314-1315; accord, *In re K.P.* (2012) 203 Cal.App.4th 614, 621-622.)

Even if we assume the evidence shows that the children shared a positive bond with father, the ultimate question we must decide is whether the juvenile court abused its discretion by failing to find that termination of parental rights would be so detrimental to the children as to overcome the strong legislative preference for adoption. That decision is entrusted to the sound discretion of the juvenile court. (*Bailey J.*, *supra*, 189 Cal.App.4th at pp. 1314-1315.) We cannot find an abuse of discretion unless the juvenile court exceeded the bounds of reason. (*In re Stephanie M.*, *supra*, 7 Cal.4th at pp. 318-319.) “““When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.””” (*Id.* at p. 319.)

Here, father asserts the children have a “strong bond” with him such that they “would suffer detriment if they were unable to see [him] again.” He adds that “[t]he evidence is especially compelling where the children have no other father figure.” Thus,

he argues “the children’s unique and significant relationship with [him] promotes their well-being to such a degree as to outweigh the well-being they would gain by being adopted by their paternal grandmother” We agree that the exception for a beneficial parental relationship may apply if the children have a “substantial, positive emotional attachment” to the parent. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) However, even if we conclude there was a substantial, positive emotional attachment, we cannot say that the juvenile court abused its discretion in determining that the relationship did not constitute a “compelling reason” (*Celine R.*, *supra*, 31 Cal.4th at p. 53) for finding that termination of parental rights would be detrimental to the children. Addressing this prong, father contends the court’s “generic finding” is “untenable under the particular circumstances of this case where the children know and love *both* their paternal grandmother *and* their father and can distinguish between the two,” and, “[h]e is their only father figure.” (Original italics.) However, father overlooks the fact that placement of the children with the paternal grandmother provided the children with the stability needed to effectuate a decrease in A.A., Jr.’s disruptive behavior. Furthermore, the children’s attorney noted that “grandmother isn’t saying that she is not going to allow contact [between father and the children], she just wants to be the one to make the decision as to what’s in the best interest.” On this record, we cannot say the juvenile court abused its discretion.

In sum, father failed to show any compelling reason for applying the beneficial parental relationship exception.

III. DISPOSITION

The orders appealed from are affirmed.

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HOLLENHORST

J.

We concur:

RAMIREZ

P. J.

CODRINGTON

J.